

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

AMSTAR GROUP, LLC, a Colorado Limited Liability Company,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 16-cv-884
)	
METRO POWER, INC., an Illinois corporation,)	
)	
Defendant.)	

COMPLAINT AT LAW

Plaintiff, AMSTAR GROUP, LLC (“AMSTAR”), by its attorneys, Foran Glennon Palandech Ponzi & Rudloff PC, complains of Defendant, METRO POWER, INC. (“METRO POWER”) as follows:

PARTIES, JURISDICTION, AND COMMON ALLEGATIONS

1. At all times relevant, AMSTAR was a Colorado Limited Liability Company with its principal place of business located at 1050 17th Street, Suite 2300, in the City and County of Denver, Colorado.
2. At all times relevant, AMSTAR was the owner of Eaglewood Resort, located at 1401 Nordic Road, in the Village of Itasca, County of DuPage, State of Illinois.
3. At all times relevant, AMSTAR was the owner of a Katolight emergency generator, Model D1250, Serial Number WA5302000-80310-0502 (the “subject generator”), which contained a 12-cylinder Cummins engine, and was located at Eaglewood Resort.
4. At all times relevant, Defendant METRO POWER was an Illinois corporation with an office located at 9249 Ethyl Lane, in the Village of Tinley Park, County of Cook, State of

Illinois, and was in the business of selling, servicing, and repairing electric equipment, including the subject generator.

5. Before September 6, 2012, AMSTAR entered into a service contract with METRO POWER to provide maintenance and repair services for the subject generator. (See Planned Maintenance Agreement attached as Exhibit A.) Said service contract was in full force and effect on September 6, 2012. As part of its contractual services, METRO POWER was to perform a four-hour load bank test on the subject generator twice per year.

6. On September 6, 2012, METRO POWER, through its employees and/or agents, conducted a load bank test on the subject generator onsite at Eaglewood Resort.

7. Approximately halfway through METRO POWER's load bank test, the engine in the generator overheated and the generator suffered a catastrophic failure.

8. As a result of METRO POWER's acts and/or omissions in connection with the performance of this load bank test, AMSTAR incurred damages in excess of \$75,000.00, including but not limited to costs associated with a rental generator and the replacement of the engine.

9. Jurisdiction is proper under 28 U.S.C. § 1332, as complete diversity between the parties exists and the amount in controversy exceeds \$75,000.00.

COUNT I - NEGLIGENCE

10. AMSTAR re-alleges and incorporates by reference Paragraphs 1 through 9 above as paragraphs 1 through 10 of this Count I.

11. At all times relevant, METRO POWER had a duty to exercise reasonable care and caution in the service, maintenance, and repair of the subject generator, including but not limited to conducting load bank testing.

12. On or about September 6, 2012, METRO POWER breached its aforementioned duty by committing one or more of the following negligent acts and/or omissions:

- a. negligently, carelessly, and improperly conducted the load bank test on the subject generator;
- b. negligently and carelessly failed to exercise reasonable care and caution to protect the subject generator and its components, including the engine, from overheating and/or other malfunction that it knew or reasonably should have known could occur during the load bank test;
- c. negligently and carelessly failed to adequately monitor the gauges for temperature fluctuations and/or other indications of overheating or other malfunction while conducting the load bank test; and
- d. was otherwise negligent in the manner in which it conducted the load bank test on the subject generator.

13. As a direct and proximate result of the aforesaid negligent acts and/or omissions by Defendant METRO POWER, the subject generator suffered a catastrophic failure, causing damage to the generator and certain components, including the engine, and causing damages in excess of \$75,000.00.

14. AMSTAR, through its agents and/or representatives, notified METRO POWER of its breaches of this agreement, and METRO POWER subsequently failed to cure or compensate for AMSTAR's damages.

WHEREFORE, Plaintiff, AMSTAR GROUP, LLC, respectfully requests this Court enter an Order granting judgment in its favor and against Defendant, METRO POWER, INC., for a sum in excess of \$75,000.00 and for such further relief as this Court deems appropriate.

COUNT II – BREACH OF CONTRACT

15. AMSTAR re-alleges and incorporates by reference Paragraphs 1 through 14 above as Paragraphs 1 through 15 of this Count II.

16. At all times relevant, METRO POWER had a contractual duty to exercise reasonable care and due caution in the manner in which it serviced, maintained and/or repaired the subject generator, including but not limited to its performance of load bank testing.

17. On or about September 6, 2012, METRO POWER breached its aforementioned duty by committing one or more of the following negligent acts and/or omissions:

- a. carelessly and improperly conducted the load bank test on the subject generator;
- b. failed to exercise reasonable care and caution to protect the subject generator and its components, including the engine, from overheating and/or other malfunction that it knew or reasonably should have known could occur during the load bank test;
- c. failed to adequately monitor the gauges for temperature fluctuations and/or other indications of overheating or other malfunction while conducting the load bank test;
- d. otherwise breached its contractual duties in the manner in which it performed the load bank test on the subject generator.

18. As a direct and proximate result of the aforesaid negligent acts and/or omissions by Defendant METRO POWER, the subject generator suffered a catastrophic failure, causing damage to the generator and certain components, including the engine, and causing damages in excess of \$75,000.00.

WHEREFORE, Plaintiff, AMSTAR GROUP, LLC, respectfully requests this Court enter an Order granting judgment in its favor and against Defendant, METRO POWER, INC., in excess

of \$75,000.00, plus the costs of bringing this suit and for any such further relief as this Court deems appropriate.

Respectfully submitted,

AMSTAR GROUP, LLC

/s/ Blair T. Titcomb_____

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